

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-184324

DATE: May 17, 1976 98937

MATTER OF: Century Hardware Corporation

DIGEST:

1. Where proposal mailed less than 5 days prior to closing date for receipt of proposals is received late, Armed Services Procurement Regulation (1974 ed.) does not provide for its consideration even though United States Postal Service employee may have made assurances that item would be delivered in time and the agency may have been telephonically informed that proposal was being sent.
2. Protester's contention that its late offer should be opened and considered, as only way to determine reasonableness of other offeror's price is through comparison with competition, is without merit in view of price analysis techniques available to agency.

On May 22, 1975, a proposal submitted by the Century Hardware Corporation was received by the United States Air Force in response to request for proposals No. F04605-75-09033 issued April 25, 1975. As the closing date for receipt of proposals had been May 21 and Century's proposal had not been mailed 5 or more days prior to that date, the Air Force determined that Century's proposal was late and refused to consider it. Century protests the Air Force's decision, contending that its proposal should be considered or new proposals should be solicited.

The solicitation requested offers for the operation of a civil engineer supply store at Anderson Air Force Base, Guam. The last of several clarifying amendments was issued on May 14, 1975. In different portions of its protest, Century has identified both May 16 and May 19 as the date upon which it received the amendment. Apart from this factual inconsistency, it appears that on May 16, a representative of Century telephoned the Air Force and stated that Century would not be mailing its offer until May 19. Century's president also advises that on May 19, he called an employee at Strategic Air Command Headquarters to inform:

"* * *him that we mailed our bid. He asked if we needed more time that could be arranged. We all felt certain, however, that there would be no problem."

By the close of business on May 21, only the proposal of Simmons Construction Co. had been received by the Air Force.

Century contends that its proposal should be considered or new proposals solicited because the United States Postal Service has made assurances that Century's proposal would be delivered by May 21; the Air Force had been notified that Century's proposal was on its way; its proposal was mailed immediately after receipt of the last clarifying amendment to the solicitation; the requirement that proposals be received by "the close of business" was not a proper method of stating the time limitation; and an award based upon the receipt of one proposal is inherently improper.

The standard solicitation provision regarding late proposals which was in effect when Century's proposal was due stated in part:

"LATE PROPOSALS, MODIFICATIONS OF PROPOSALS AND
WITHDRAWALS OF PROPOSALS (1974 APR)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made; and

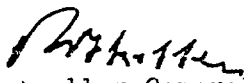
- (i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);" Armed Services Procurement Regulation (ASPR) § 7-2002.4 (1974 ed.).

Since Century's proposal was not mailed at least 5 calendar days before the closing date for receipt of proposals, its proposal was late under the terms of the clause quoted above. We do not believe this conclusion is changed by Century's informal advice to the agency that it was submitting a proposal or the assurances

which may have been made by a Postal Service employee as to arrival date.

Century also alleges that its offer should be opened and considered because the reasonableness of Simmons' price can be established only in comparison with a competitor. We do not agree. ASPR § 3-506(e) states that late proposals shall be held unopened. Moreover, ASPR § 3-807.2(a) requires some form of price or cost analysis to be performed in connection with every negotiated procurement. Price analysis may include a comparison of the quoted price with prior quotations and contracts for the same or similar end items and with prices quoted in competitive published price lists. Also, ASPR § 3-807.1(c) states that a price is "based on" adequate price competition if price analysis "shows clearly that the price is reasonable in comparison with current or recent prices for the same or substantially the same items procured in comparable quantities under contracts awarded as a result of adequate price competition* * *."

Accordingly, Century's protest is denied.


Deputy Comptroller General
of the United States